IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3875 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMBALAL ARJANBHAI SUKHADIA - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR RAKSHIT DHOLAKIA FOR MR YOGESH S LAKHANI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 12/10/2007

ORAL JUDGMENT

This petition has been filed by original accused No.1 seeking quashing of complaint bearing Criminal Case No.1095/97, filed before the Metropolitan

Magistrate, Court No.10, Ahmedabad by respondent No.2 herein.

2. I have heard learned advocate Shri Rakshit Dholakia for the petitioner and Shri Dipen Desai, learned APP for respondent No.1 State. Respondent No.2 though served long back is not represented by any advocate.

3. In the complaint, the complainant has stated, inter alia, that he is the owner of a property, namely, open piece of land in front of a residential premise constructed on Municipal Survey No.212/1/49 and 212/1/51. It is the case of the complainant that he had given the said premise on rent to the petitioner. It is the case of the complainant that thereafter, he was called by the petitioner at his residence on 10.3.97 where accused No.2 was also present and asked him to put his thumb impression on certain documents. Relying on the assurance of the accused that the documents pertain only to rent agreement, he put his thumb impression. Upon receiving the copies of the documents, however, he realized that the same were pertaining to sale agreement.

4. Having read the entire complaint, it is clearly emerging that the complaint is frivolous and filed with a mala fide intention abusing the process of law.

5. The complainant concededly is not the owner of the property in question. It appears that he himself was enjoying the property as a tenant and had transferred the possession thereof to the petitioner by creating a sub-tenancy. The question of purchasing property from him, therefore, would not arise. In the complaint itself, he has stated that he was paying rent for the said property to one Betulmal Trust. It may, however, be noted that the complainant stated that on 10.3.97, when he went to the house of the petitioner, one lady was sitting there, who asked him to put the thumb impression assuring him that there is nothing adverse to his interest in the documents. Trusting her, he put his thumb impression. This is totally an unbelievable aspect of the matter. Apparently, the petitioner did not know the lady at all. It was, therefore, not possible to believe that he relied on her assurance to put the thumb impression. In any case, such assurance was held out by the lady who is not even joined as accused and such assurance even if given by the lady cannot be attributed to the petitioner herein. The complainant also admitted to have received a sum of Rs.8,000/- by cash and Rs.3,000/- by cheque.

6. Thus reading the entire complaint in its entirety, it is apparent that a crude attempt is made to involve the petitioner in a criminal offence where at the very best, the complainant had some outstanding recovery to be made form the petitioner,

if at all. It also appears that the complaint was filed after the petitioner replied to the notice issued by the complainant and indicated that for an attempt of cheating, the petitioner would like to prosecute the complainant.

7. Considering all these aspects of the matter, I have no hesitation in quashing the complaint. Accordingly, Criminal Case No.1095/97 of the Court of Metropolitan Magistrate, Court No.10, Ahmedabad is quashed. Rule is made absolute accordingly.

(Akil Kureshi, J.)

(vjn)